

DECLARATION OF REGINA ASMUTIS-SILVIA

I, REGINA ASMUTIS-SILVIA, declare as follows:

1. I currently reside in Plymouth, Massachusetts, where I have lived for 19 years.
2. I currently am the Executive Director (North America) of Whale and Dolphin Conservation (WDC), where I have been employed for the last seven years.
3. Whale and Dolphin Conservation was established in 1987 and is dedicated to the conservation and welfare of all whales, dolphins and porpoises (also known as cetaceans). WDC North America is based in Plymouth, Massachusetts.
4. I have a Masters of Science Degree in Biology, and I have researched and worked toward the conservation of North Atlantic right whales in the wild for more than 20 years. I am a member of the Atlantic Large Whale Take Reduction Team where I advocate for fishing practices that will reduce the risk of entanglement to large whales, including the critically endangered right whale.
5. I chaired the Marine Mammal Behavioral Disturbance and Large Whale Entanglement Working Groups and represented the Conservation Seat on the Stellwagen Bank National Marine Sanctuary's Ship Strike Working Group. In addition, I am a member of the Right Whale Consortium, International Fund for Animal Welfare's Marine Mammal Rescue, the New England Aquarium Stranding Network, and provide marine observers to Battelle while they are conducting water sampling cruises in Massachusetts and Cape Cod Bays.
6. I have a 100-ton USCG near coastal Master's license and have worked as a mate and captain on whale watching and research cruises.

7. On January 12, 2013, local fishermen reported what they believed to be a single 12-foot pilot whale in Plymouth harbor and indicated the animal had been in the outer harbor for several days. Staff from WDC, including myself, responded by vessel and determined that the sighting was of a small North Atlantic right whale. After receiving authorization from the National Marine Fisheries Service (NMFS) to approach, WDC confirmed it was actually two right whales, a mother and calf of the year. *See Exhibit 1* (photograph of right whale).
8. Researchers at the Provincetown Center for Coastal Studies (PCCS) and the New England Aquarium estimated the calf was no more than two weeks old when first observed.
9. When I observed the whales on January 12th, the pair was in relatively shallow water (29-59 feet). While the calf remained almost constantly at the surface, the mother rarely surfaced and, when she did, little but her head was visible. Due to the behavior of the animals and the gray conditions, the crew was unable to determine if injuries or gear were present. As a result, an aerial survey team from PCCS was enlisted to photograph the pair. The whales were determined to be gear free and PCCS identified the mother as Wart, a whale last seen in 2010 when she was disentangled from fishing gear she had been carrying for roughly two years.
10. Wart was first sighted in 1981 and she is known to have given birth to at least six calves (1982, 1987, 1990, 1994, 2001, and 2005) prior to her current newborn calf.

11. Five days after the initial sighting, on January 17, 2013, WDC staff photographed the pair from land, within 0.5 miles of shore off Manomet (central Plymouth), MA. *See* Exhibit 2 (Google Earth Map Marking Sightings). The U.S. Army Corps of Engineers issued a temporary closure of the Cape Cod Canal on January 20th when the pair was located by the breakwater at the east end of the Canal.
12. On January 21, 2013, a security officer from the Pilgrim Nuclear Power Station (PNPS) notified WDC via telephone call that Wart and calf were in close proximity to the breakwater within the "exclusion zone" of the plant. *See* Exhibit 2. My understanding of the "exclusion zone" is that it extends approximately 500 yards out from PNPS's discharge canal. From reviewing depth charts, the sighting of the whales in close proximity to the breakwater would mean they were in approximately 11 to 27 feet of water at the time.
13. On the afternoon of January 21st, researchers from PCCS, NOAA's Northeast Fisheries Science Center, MA Department of Marine Fisheries, and WDC located Wart and her calf in approximately 16 feet of water off Gurnet Point at Plymouth's outer harbor. *See* Exhibit 2. No obvious health concerns were noted though zooplankton samples obtained by PCCS appeared to be insufficient for foraging. Water temperature in the harbor was, at least, 10 degrees C lower than off Fernandina Beach, FL, a typical right whale calving habitat.
14. During WDC observations of Wart and her calf, the calf spent nearly all of its time at or near the surface. This is consistent with studies that have documented that calves and mother-calf pairs spend significantly more time at the surface than other whales. *See, e.g.,* Baumgartner, M. F., and B. R. Mate. 2003. Summertime

foraging ecology of North Atlantic right whales. Marine Ecology Progress Series 264:123-135.

15. I and other WDC staff also observed the calf swimming in a nursing position next to its mother. Although nursing was not directly observed, given the calf's age and the close physical proximity to its mother, it is highly likely nursing was occurring.
16. While the last confirmed sighting of the pair was on the 21st, scallop fishermen later reported what was believed to be Wart and her calf off Race Point, Provincetown, on January 29th. No additional sightings have been obtained since that time.
17. This is the first mother and calf right whale sighting in Cape Cod Bay in January in 27 years. (A. Knowlton, pers.comm). Also, it may be the earliest documented birth in the Northeast Region. See Patrician, et al. 2009. Evidence of a North Atlantic right whale calf (*Eubalaena glacialis*) born in northeastern waters. Marine Mammal Science 25(2):462-477.
18. From my review of available NOAA right whale sighting records for Cape Cod Bay, this is the first documented mother-calf pair of right whales sighted near PNPS.

Executed on March 21, 2013, at Plymouth, Massachusetts.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Regina Asmutis-Silvia
Executive Director, North America
Whale and Dolphin Conservation